



**INDEPENDENT STATE OF PAPUA NEW GUINEA
DEPARTMENT OF JUSTICE & ATTORNEY GENERAL**

EXTRADITION ACT 2005

**EXTRADITION REQUESTS BY PACIFIC ISLAND FORUM COUNTRIES
ENDORSED ARREST WARRANTS**

This guidance note deals with extradition requests made by Pacific Island Forum countries in non-urgent cases.

For urgent extradition requests by Pacific Island Forum countries, refer to the separate “Provisional Arrests” guidance note.

A. BEFORE MAKING A REQUEST

The requesting country’s central authority should contact Papua New Guinea’s Legal Policy and Governance Branch (PNG’s central authority) in advance of making a request extradition, particularly in the most serious cases, to ensure the assistance which being sought is available under the laws of PNG, and the request will meet the legal requirements of PNG. The requesting country should also send a draft request by email first for this purpose to:

The Director
Legal Policy & Governance Branch
Department of Justice & Attorney-General
P.O Box 591
Waigani
National Capital District
Papua New Guinea
Email: international.cooperation@justice.gov.pg

Tel: +675 301 2956

B. MAKING AN EXTRADITION REQUEST

LEGAL BASIS: The *Extraction Act 2005* is PNG’s enabling law that regulates the Extradition Requests. PNG’s *Extradition Act 2005* only allows for extradition requests to be made to PNG as of right by Pacific Island Forum countries (under Part 2 of the Extradition Act – s9). For all other countries, there must be an extradition treaty in place with PNG in order for an extradition request to be made (Part 3 of the Extradition Act – ss 22 and 23).

This checklist only governs the making of extradition requests by Pacific Island Forum countries using the 'endorsed warrants' scheme provided for under Part 2 of PNG's Extradition Act.

CENTRAL AUTHORITY: A request for extradition can be made by letter and must be made to the Minister for Justice (s3):

Minister for Justice
Department of Justice & Attorney-General
P.O Box 591
Waigani
National Capital District
Papua New Guinea

Request can also be sent through diplomatic channels.

In practice, requests will be processed by the central authority (Legal Policy & Governance Branch - details above).

REQUEST TO BE IN WRITING AND IN ENGLISH: The extradition request from the requesting country to the Minister for Justice, and all supporting documents, must be in writing and in English (although the Minister may still accept a supporting document that contains some matter in a language other than English, as long as the material parts are in English) (s3).

REQUESTS MUST BE MADE BY/ON BEHALF OF COUNTRIES AND NOT BY INDIVIDUALS: The request must be made on behalf of the requesting country by an authorized body/person under the requesting country's extradition laws, and the legal basis upon which the request is made must be stated. Extradition requests cannot be made by individuals in their own right.

TYPES OF CRIMINAL MATTERS FOR WHICH EXTRADITION CAN BE SOUGHT: Under section 7 of the Extradition Act, extradition can only be sought:

- Where, under the law of the requesting country, the relevant offence carries a maximum penalty of either the death penalty or at least 12 months imprisonment, and
- The conduct that constitutes the offence, if committed in PNG, would be an offence in PNG for which the maximum penalty is either the death penalty or at least 12 months imprisonment.

Note that the test for dual criminality is based on the conduct underlying the offence, rather than PNG having an identically described offence.

Additionally, section 7 of the Extradition Act allows extradition for a particular offence if it is provided for in a bilateral treaty with PNG.

The Extradition Act expressly states that an offence may be an extraditable offence regardless of whether it relates to taxation, customs duties or other revenue matters or relating to foreign exchange controls, and PNG does not have a tax, duty, impost or control of that kind.

REQUEST MUST ATTACH THE ORIGINAL ARREST WARRANT: The request must attach the original arrest warrant(s) for which the person is sought to be extradited (s12).

(If the situation is urgent and the requesting country does not have time to send the original warrant, the requesting country may provide the original warrant as soon as possible afterwards, but the person can only be provisionally arrested (s10) – this situation is dealt with under a separate guidance note on Requests for Provisional Surrender Warrants by Pacific Island Forum Countries.

SPECIALITY UNDERTAKING: PNG may refuse extradition of the person sought if the requesting Forum State does not provide a specialty undertaking – in other words, a statement that the person sought to be extradited will not be prosecuted for offences other than the one(s) for which extradition has been sought.

C. INFORMATION REQUIRED IN REQUESTS

Authority: The name of the authority making the extradition request and the legal basis under the requesting country's domestic law upon which the request is made.

Reciprocity: The requesting country should provide a statement of reciprocity (e.g. The Government of country x assures the Government of PNG that it would, to the fullest extent permitted under the laws of country x, comply with a request for assistance of this kind in respect of equivalent offences made to it by the Government of PNG).

Personal particulars of the alleged offender: The full name (including any aliases), sex, nationality, and, and any other relevant information that may help to establish that person's identity and location (for example, copy of identity card, driver's licence, fingerprints, passport and, photographs) and any information or statement showing that the person is in PNG or is on his/her way to PNG (e.g. employed in PNG), and his/her current location within PNG.

Summary of the alleged offence: The text of the alleged offence(s) and the maximum penalties for the offence(s) (s7).

Summary of alleged facts: A summary of the relevant facts of the case, conduct and circumstances of the investigation, including enough information for PNG to be able to undertake a dual criminality assessment (s7). The statement should also address any possible extradition objections, to the extent possible to do so - see section E below.

Contact details: The name and address (including e-mail address) of the person who PNG authorities should contact. The contact details of both the action officer in the Central Authority and the investigators/prosecutors from the requesting country should be provided.

Timeframe for response: State when a response is required. If the request is urgent, provide the details stating why it is urgent (such as an upcoming court date). If there are pending limitation periods, set out the precise dates. (If the matter is so urgent that a provisional arrest is sought, see the separate guidance note on Requests for Provisional Surrender Warrant by Pacific Island Forum Countries).

D. ENDORSEMENT OF WARRANTS PROCEDURES

Once the Minister has authorized PNG to act on an extradition request, PNG's central authority will refer the matter to the Public Prosecutor's office (s6). The Public Prosecutor will apply to a District Court Magistrate on behalf of the Forum country for the endorsement of the original arrest warrant, for the arrest of the person – the original warrant must be produced to the Magistrate (s12(a)). The Public Prosecutor must also satisfy the Magistrate by affidavit that the person named in the original warrant is, or is suspected of being in PNG, or is on his way to PNG.

The Public Prosecutor will then provide a copy of the endorsed warrant to the police, to arrest the person. Once arrested, the person must be brought before a District Court Magistrate as soon as practicable (s13(1)). The Magistrate must remand the person in custody, unless there are special circumstances (s13(2)). Where special circumstances exist the person will be remanded on bail.

E. SURRENDER PROCEEDINGS

The District Court Magistrate will then conduct surrender proceedings, which give the person an opportunity to consent to or oppose his or her extradition (ss15-17).

Grounds to object to extradition by person sought to be extradited:

Section 8 states that the person against whom extradition is sought may raise the following grounds of objection:

- a) the extradition offence is regarded as a political offence;
- b) there are substantial grounds for believing that surrender of the person sought for the purpose of prosecuting or punishing the person because of his or her race, religion, nationality, political opinion, sex or status, or for political offence in the requesting country;
- c) on surrender, the person may be prejudiced at his or her trial or punished, detained or restricted in his or her personal liberty because of his or her religion, nationality, political opinions, sex or status;
- d) the offence is an offence under the military law, but not also under the ordinary criminal law of Papua New Guinea;
- e) final judgement has been given against the person in Papua New Guinea or in another country for the offence;
- f) under the law of the requesting country or Papua New Guinea, the person has become immune from prosecution or punishment because of lapse of time, amnesty, or any other reason;
- g) the person has already been acquitted or pardoned in the requesting country or Papua New Guinea, or punished under the law of that country or Papua New Guinea, for the offence or another offence constituted by the same conduct as the extradition offence.

Under section 17, the Magistrate must decide that the person should be surrendered (and issue a surrender warrant) **unless he/she is satisfied that:**

- (a) the offence is of a trivial nature; or
- (b) if the offence is one of which the person is accused by not convicted – the accusation was not made in good faith and in the interests of justice; or
- (c) a lengthy period has elapsed since the offence was committed; or
- (d) in the circumstances of the case, to surrender the person would be:
 - (i) unjust; or
 - (ii) oppressive; or
 - (iii) a punishment that is disproportionate to the offence.

F. ONCE SURRENDER WARRANT IS ISSUED

Once a District Court Magistrate has issued a surrender warrant, PNG's central authority will provide a copy to the requesting country. The requesting country should then provide a letter of authorisation, giving details of the proposed escort officers who will come to PNG to collect the person being surrendered and their proposed dates of travel.

Surrender cannot take place until 15 days after the surrender warrant was issued (unless the person consented to surrender), since this is the period within which the person can seek to review the Magistrate's surrender decision (s18). Surrender should occur within 2 months of the surrender warrant, or the person can apply for release from custody (s21).

PNG police will escort the surrendered person to the airport and hand him/her over to the requesting country's escort officers.